



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

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**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
Culpepper Wellness Foundation
FOR
Unpermitted Activity NP-2021-0178**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 62.1-44.15, 62.1-44.15:25, and 62.1-44.15:48, between the State Water Control Board and Culpepper Wellness Foundation regarding the Culpepper Wellness Foundation, for the purpose of resolving certain violations of the State Water Control Law and the applicable regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
2. "Construction activity" means any clearing, grading or excavation resulting in land disturbance of equal to or greater than one acre, or disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one acre.
3. "CWF" means Culpepper Wellness Foundation, a nonstock corporation authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. CWF is a "person" within the meaning of Va. Code § 62.1-44.3.

4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
6. "Discharge" means the discharge of a pollutant.
7. "Discharge of a pollutant" means:
 - a. Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
 - b. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
8. "General Permit Regulation" means the General VPDES Permit for Discharges of Stormwater from Construction Activities, 9 VAC 25-880-1 et seq.
9. "Land disturbance" or "land-disturbing activity" means a man-made change to the land surface that potentially changes its runoff characteristics including clearing, grading, or excavation, except that the term shall not include those exemptions specified in Va. Code § 62.1-44.15:34.
10. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
11. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
12. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
13. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. § 2011 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. . . ." 9 VAC 25-870-10.
14. "Pollution" means "such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational,

commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are ‘pollution.’” Va. Code § 62.1-44.3.

15. “Registration Statement” means a registration statement for coverage under the State Permit.
16. “Site” or “Project” means the parcel of land being developed by CWF located at 19002 Crossroad Parkway in Culpeper, Virginia, from which discharges of stormwater associated with construction activity occur.
17. “State Permit” or “Construction General Permit” or “CGP” means the General VPDES Permit for Discharges of Stormwater from Construction Activities, No. VAR10, promulgated at 9 VAC 25-880-70, which was issued under the State Water Control Law, the VSMP Regulations, and the General Permit Regulation on July 1, 2019 and which expires on June 30, 2024.
18. “State Water Control Law” means Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 of the Va. Code.
19. “State Waters” means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
20. “Stormwater” means precipitation that is discharged across the land surface or through conveyances to one or more waterways and that may include stormwater runoff, snow melt runoff, and surface runoff and drainage. Va. Code § 62.1-44.15:24.
21. “Stormwater management plan” or “SWM plan” means a document or series of documents containing material describing methods for complying with the requirements of a VSMP or the VSMP Regulations. 9 VAC 25-870-10.
22. “SWPPP” means Stormwater Pollution Prevention Plan, which is a document that is prepared in accordance with good engineering practices and that identifies potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges. A SWPPP required under a VSMP for construction activities shall identify and require the implementation of control measures, and shall include, but not be limited to the inclusion of, or the incorporation by reference of an approved erosion and sediment control plan, an approved stormwater management plan, and a pollution prevention plan. 9 VAC 25-870-10.

23. "Virginia Stormwater Management Act" means Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of the Va. Code.
24. "Va. Code" means the Code of Virginia (1950), as amended.
25. "VAC" means the Virginia Administrative Code.
26. "VESCP authority" means an authority approved by the board to operate a Virginia Erosion and Sediment Control Program. An authority may include a state entity, including the department; a federal entity; a district, county, city, or town; or for linear projects subject to annual standards and specifications, electric, natural gas and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to § 15.2-5102. Va. Code § 62.1-44.15:52.
27. "VESC Regulations" means the Virginia Erosion and Sediment Control (VESC) Regulations, 9 VAC 25-840-10 et seq.
28. "VPDES" means Virginia Pollutant Discharge Elimination System.
29. "VSMP" means the Virginia Stormwater Management Program, which is a program approved by the Soil and Water Conservation Board after September 13, 2011, and until June 30, 2013, or the State Water Control Board on and after June 30, 2013, that has been established by a VSMP authority to manage the quality and quantity of runoff resulting from land-disturbing activities and shall include such items as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, enforcement, where authorized in this article, and evaluation consistent with the requirements of this article and associated regulations. Va. Code § 62.1-44.15:24.
30. "VSMP authority" means an authority approved by the Board after September 13, 2011, to operate a VSMP or, until such approval is given, the Department. An authority may include a locality; state entity, including the Department; federal entity; or for linear projects subject annual standards and specifications in accordance with subsection B of § 62.1-44.15-31, electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to § 15.2-5102. Va. Code § 62.1-44.15:24.
31. "VSMP Regulations" means the Virginia Stormwater Management Program (VSMP) Regulations, 9 VAC 25-870-10 et seq.

SECTION C: Findings of Fact and Conclusions of Law

1. CWF is the construction activity operator for the Site located in Culpeper County, Virginia.

2. DEQ is the VSMP authority for the project, as well as the issuer of the CGP. Culpeper County is the VESCP authority for the project.
3. Receiving waters for stormwater discharges from the Site include Potato Run and the Rapidan River, and are considered “state waters” under the State Water Control Law.
4. CWF submitted its first iteration of a CGP registration statement and a SWM plan for the Site on May 13, 2021, which indicated a projected development acreage greater than one acre with a total site area of 2.24 acres, and 1.22 acres proposed for land disturbance. DEQ requested several revisions and resubmissions of the SWM Site plans, and each submission of the plans included a consistent disturbed acreage through the most recent July 20, 2021 submission.
5. On August 5, 2021, DEQ was notified by Culpeper County of the initiation of land disturbance at the Site by CWF. This notification indicated that the Site’s proposed land disturbance was under one acre and therefore did not require SWM plan approval from DEQ or coverage under the State Permit.
6. On September 29, 2021, DEQ communicated with representatives of CWF and explained the acreage and land disturbance planned for the overflow parking lot portion of the project is considered as part of a common plan of development for the project, and that the entirety of project exceeded one acre of land disturbance and would therefore require DEQ’s approval of a SWM plan and coverage under the State Permit.
7. On October 20, 2021, DEQ staff conducted an inspection of the Site and noted ongoing land disturbance without an approved SWM plan or a CGP. On October 27, 2021, DEQ responded to representatives of CWF that the plans provided to DEQ staff on October 20 still did not include or address plans for the full build-out of the project under a common plan of development.
8. 9 VAC 25-31-50 states: “Except in compliance with a VPDES permit, or another permit, issued by the board or other entity authorized by the board, it shall be unlawful for any person to...[d]ischarge stormwater into state waters from municipal separate storm sewer systems or land disturbing activities.”
9. 9 VAC 25-870-54(C) states: “A stormwater management plan consistent with the requirements of the Virginia Stormwater Management Act and regulations must be designed and implemented during construction activities. Prior to land disturbance, this plan must be approved by the VSMP authority.”
10. 9 VAC 25-870-310(A) states: “Except in compliance with a state permit issued by the board pursuant to the Virginia Stormwater Management Act, it shall be unlawful for any person to discharge stormwater into state waters from Municipal Separate Storm Sewer Systems or land-disturbing activities.”

11. Va. Code § 62.1-44.5(A) states: “Except in compliance with a certificate or permit issued by the Board or other Entity authorized by the Board to issue a certificate or permit pursuant to this chapter, it shall be unlawful for any person to ... [d]ischarge stormwater into state waters from Municipal Separate Storm Sewer System or land disturbing activities.”
12. Va. Code § 62.1-44.15:34 states: “A person shall not conduct any land-disturbing activity until he has submitted a permit application to the VSMP authority that includes a state VSMP permit registration statement, if such statement is required, and, after July 1, 2014, a stormwater management plan or an executed agreement in lieu of a stormwater management plan, and has obtained VSMP authority approval to begin land disturbance.”
13. Va. Code §§ 62.1-44.15:24 and -44.15:34 define “land-disturbing activity” and describe regulated land-disturbing activities (including exemptions), respectively.
14. Based on the results of DEQ’s Site inspection and file review as summarized above, a Notice of Violation (NOV No. SW2021-10-NRO-003) was issued to CWF on October 29, 2021, for the initiation of land disturbing activities without proper SWM plan approval or CGP coverage
15. On November 18, 2021, DEQ staff met with representatives of CWF to discuss the NOV, plans for corrective actions, and enforcement proceedings.
16. Representatives of CWF and its partners addressed DEQ’s comments on the site plans, and revised plans were developed with approximately 1.58 acres of land disturbance and a total area of development of 8.89 acres. Culpeper County (as the VESCP authority) approved the revised ESC plans on December 27, 2021, followed by DEQ approving the SWM plan and issuing CWF coverage under the State Permit on January 7, 2022. CWF was assigned permit registration No. VAR10Q405.
17. Based on the various iterations of SWM plans and registration statements submitted to DEQ, the results of the inspection performed on October 20, 2021, notifications/communications between DEQ and Culpeper County, DEQ’s corresponding file review(s), and related correspondence and between DEQ and representatives of CWF, the Board concludes that CWF violated Va. Code § 62.1-44.5(A), Va. Code §62.1-44.15:34, 9VAC25-870-310(A), 9VAC25-31-50, and 9VAC25-870-54(C) as described above.
18. On January 13, 2022, DEQ Construction Stormwater staff conducted a follow-up inspection of the Site and noted that all previously requested corrective actions were adequately completed.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, 62.1-44.15:25, and 62.1-44.15:48, the Board orders CWF, and CWF agrees to pay a civil charge of **\$8,137.50** within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

CWF shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Stormwater Management Fund. If the Department has to refer collection of moneys due under this Order to the Department of Law, CWF shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of CWF for good cause shown by CWF, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 et seq., after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. SW2021-10-NRO-001 dated October 21, 2021. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, CWF admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. CWF consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. CWF declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the

right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.

6. Failure by CWF to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
 7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
 8. CWF shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. CWF shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. CWF shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.
- Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.
9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
 10. This Order shall become effective upon execution by both the Director or his designee and CWF. Nevertheless, CWF agrees to be bound by any compliance date which precedes the effective date of this Order.
 11. This Order shall continue in effect until:

- a. The Director or his designee terminates the Order after CWF has completed all of the requirements of the Order;
- b. CWF petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
- c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to CWF.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve CWF from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by CWF and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of CWF certifies that he or she is a responsible official or officer authorized to enter into the terms and conditions of this Order and to execute and legally bind CWF to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of CWF.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, CWF voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 25th day of July, 2022.



Thomas A. Faha, Regional Director
Department of Environmental Quality

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Culpeper Wellness Foundation voluntarily agrees to the issuance of this Order.

Date: May 20, 2022 By: Shari J. Landry President
(Person) (Title)
Culpeper Wellness Foundation

Commonwealth of Virginia
City/County of Culpeper

The foregoing document was signed and acknowledged before me this 20 day of
May, 2022, by Shari J. Landry who is
President of Culpeper Wellness Foundation, on behalf of the
corporation.

Marcia Hoffman
Notary Public

7110473
Registration No.

My commission expires: August 31, 2023

Notary seal:

